THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of the RV in the Rating List; Restaurant and Premises; Main space rate; Comparable properties; *Appeal dismissed.*

RE: Bst-Grd Floors 282-292 Westbourne Grove, London W11 2PS

APPEAL NUMBER: CHG100878734

BETWEEN:	Getti Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr M Smith (Senior Member)

Mrs A Taylor

CLERK: Mrs S Morgan

REMOTE HEARING: Tuesday 23 January 2024

PARTIES PRESENT: Mr D Wagstaffe – Appellant's representative (Matthews & Goodman LLP)

Mr C Cates – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as a restaurant and premises at £650,000 rateable value (RV) with effect from 9 July 2021.

Introduction

2. This is a 2017 rating list appeal. The subject property is situated in the basement and ground floors of 289-292 Westbourne Grove, London and had been entered in the 2017 rating list as 'restaurant and premises' at a RV of £650,000 with effect from 9 July 2021.

3. The challenge submission was made by Matthews & Goodman LLP on behalf of Getti Ltd and was received by the Valuation Officer on 14 November 2022. It had been made on the grounds that the appellant believed that the tone was incorrect believing that a main space rate should be reduced from £1,700/m^2 to £850/m^2 compared with other properties in the locality. The appellant's representative originally sought a reduction to £335,500 RV but following negotiations he then sought a revised RV of £450,000 with effect from 9 July 2021. However, at the hearing he requested £335,500 RV again.

4. The Valuation Officer issued a challenge case decision notice in which it was stated that based upon the evidence and information available, the existing rateable value of £650,000 based on a main space price of £1,625/m^2 was reasonable.

5. Mr Wagstaffe appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Wagstaffe declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client's cases. Mr Wagstaffe confirmed that he was not representing his client under any contingency fee.

6. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

7. Mr Cates appeared on behalf of the Valuation Officer as advocate as he had picked up this case from a colleague who had left the agency, however, he believed that his experience would cover him as an expert witness.

8. This document is not and does not purport to be a verbatim record of proceedings.

Issue

9. The appellant's representative contended that the main space rate adopted in the assessment was excessive. He sought a reduction to £850/m^2 whilst the Valuation Officer's representative contended that the unadjusted rate of £1,625/m^2 was reasonable.

Evidence and submissions

10. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; comparable properties; rental evidence, location plans; photographs of the appeal property and comparable properties; summary valuation reports, detailed assessment reports, the definition of rateable value and case law.

11. The case law included was as follows.

    Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141 - outlines *six propositions* to have regard to when considering the weighting of evidence.
    Williams (VO) v Scottish and Newcastle Retail Ltd [2001] RA 41 – mode and category of use.

    Jafton Properties v Prisk (VO) (1997) – consideration of the importance of tone of the list.
    Futures London v Stratford (VO) (2005) – passing rent rejected in favour of a settled pattern of assessments.
    O'Brien v Harewood (VO) (2003) – defines the 3 stages in establishing tone of the list.

12. The subject property was formerly 6 units which had been altered to form one large unit which was currently in situ. The property was originally assessed as a shop and premises. From 2021, the current occupier moved-in and has been operating the property as a restaurant, with the list having been altered to show a change of description to restaurant and premises. However, at the same time, the Rateable Value was increased to £835,000, with effect from 9 July 2021.

13. The subject property was reduced from £835,000 RV to £650,000 RV with effect from 9 July 2021 during the challenge period to reflect changes from a shop and premises to a restaurant and premises valued on an overall basis.

14. The subject property currently comprises of a ground floor restaurant and kitchen area with a small basement area consisting of toilets and stores. The total area was 551.73m^2. The property is located in a prominent position on a corner plot with the main frontage being on Westbourne Grove and a return frontage onto Portobello Road.

15. The subject property was revalued to reflect changes to a restaurant under scheme number 384274 where the value applicable was to restaurants situated in Westbourne Grove in the Royal Borough of Kensington & Chelsea which are valued on an overall basis. The value also applied to properties occupied for alternative uses which were situated in the type of building described above. Properties in this scheme had a base rate price range from £800/m^2 to £1,700/m^2.

Decision and reasons

16. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City*

Council [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

17. There was a Form of Return when the appeal property was in use as retail premises which showed a rent review effective from 28 October 2014 with an agreed rent of £800,000 pa. This analysed to £2,460/m^2.

18. The subject property is currently held on a FRI lease from 9 July 2021 for 20 years, at an initial rent of £650,000 pa after a six month rent free period.
The 2021 rent was considerably lower than the previous rent at the property, which may reflect the impact of Covid19 on this agreement.

19. Having examined the evidence presented by the parties the panel found the drawback on the 2014 rent on the subject property was that it was assessed as a shop and premises rather than as a restaurant. It was also noted that the rent included the entire basement area, most of which was a gym, and as such, it did not represent the demised area of the hereditament. The panel found that the 2021 agreement was in line with the RV, however, the drawback here was that it was too far away from the AVD to be strong evidence. It was also noted that the 2021 rent was between connected parties. Although noting the drawbacks on the subject rents, the panel felt that it did not indicate that the RV was excessive.

20. In relation to rents on comparable properties, the respondent's representative referred to Chucs at 226 Westbourne Grove. This restaurant was smaller than the subject property with a total area in terms of main space of 71.54m^2. It included two floors of living accommodation. It was unclear as to how much value the living accommodation represented. There was a rent passing on 1 June 2015 of £182,500 pa for a term of 15 years with five-year rent reviews. This rent analysed to £2,423/m^2 and was valued at a main space rate of £1,700/m^2.

21. 141-145 Westbourne Grove. This restaurant was smaller than the subject property at 95.47m^2 in terms of main space. There was a rent passing in June 2014 of £82,500 pa which analysed to £864.15/m^2. This has been valued at a main space price of £800/m^2.

22. 108-110 Notting Hill Gate. The subject property was nearly twice the size of this McDonalds restaurant. The location was next to Notting Hill tube station which the appellant's representative acknowledged was not as pleasant a location. There was a rent agreed at £315,000 pa effective from 25 March 2015 which analysed to £1,208/m^2. It had been valued on an overall basis of £1,200/m^2. This assessment included an allowance of 7%.

23. The appellant's representative commented on the respondent's comparable evidence. He believed that the rent on 226 Westbourne Grove was not of great use in determining value, as the restaurant area was only 37.76m^2 compared to the subject property with 290.87m^2 of restaurant space. In relation to 141-145 Westbourne Grove, he believed that this supported his case that the base price used was excessive and although noting that the assessment for 108-110 Notting Hill Gate included an MCC allowance, it was valued at a significantly lower price per m^2, and even with the allowance removed it was still a little more than half the RV of the subject property.

24. Examining all of the rental evidence provided, the panel was not persuaded it supported a reduction in the subject property's RV.

25. The appellant's representative evidence included evidence of assessments on local restaurant premises, the analysis of larger restaurants in the general area, restaurants immediately adjacent to the subject property, large shops valued on an overall basis and other nearby properties used as restaurants and food outlets.

26. The appellant's representative was relying on comparable assessments in his schedule of 28 restaurants in Westbourne Grove, rather than any rents to support his case for a lower RV. The schedule included 20 restaurants that had been valued at £500/m^2, all in valuation scheme 388541, where the physical size had been agreed and used in the valuation. Basement and Ground floors, 108 Westbourne Grove was the closest in size to the subject property and this had been valued at £500/m^2. The remaining 8 restaurants were valued at between £760/m^2 and £1,700/m^2, with the majority of those being in valuation scheme 384274, the same as the subject property.

27. The appellant's representative considered a stand back and look approach was essential. Valued in its current mode or category of occupation as a restaurant, he argued that there was a need to look at other restaurants of a similar character and quality which are valued at less than half of the RV applied to the subject property. The appellant's representative considered the current RV for the subject property was too high by comparison. He contended that no other restaurant operator would pay more than double the rent found to be acceptable on other directly comparable properties. Consideration also had to be given to its odd shape and unusual width to depth ratio. In addition, it had the stairwell to the flats above intruding into the restaurant area. The appellant's representative believed that it would be unfair to value the subject property at a higher rate against similar restaurants in a similar location. The panel appreciated those comments and recognised that there was a large variation in the price per square metre that had been adopted by the Valuation Officer for restaurants in the general area. However, during questions, it was established that the fit-out costs to convert the subject property to a restaurant were in the region of £2,500,000. It was noted that the capital expense did not appear in the challenge or analysis.

28. In relation to the comparable evidence, the appellant's representative had relied on his schedule of restaurants in Westbourne Grove together with other nearby restaurants in Portobello Road. The majority of these were in a different valuation scheme to the subject property. Although noting that this evidence provided many restaurants where £500/m^2 had been applied as the main space rate, their position was more inferior to that of the subject property.

29. For other local restaurants valued on an overall basis, the appellant's representative contended that much of the tone (£600/m^2 to £850/m^2) was below the value applied to the subject property and this should be reflected in any consideration of the RV. None of the restaurants in the area had base values as high as £1,700/m^2. When asked, the appellant's representative had given the addresses of two properties which he regarded as his best comparable evidence. The first was Portobello Gold at 95-97 Portobello Road, London where the main space rate was £750/m^2. The panel noted that this property was smaller than the subject property with a total floor area of 407.28m^2. It was spread over three floors and included a basement area. It was part of valuation scheme 388467 which applied to

properties in Portobello Road valued on an overall basis. The panel found that its location was more inferior to that of the subject property which was situated on the corner of a busy area where the restaurant space was spread over a large area on the ground floor.

30. The other property which the appellant's representative considered was one of his best comparable properties was Basement and Ground floors, 108 Westbourne Grove at £500/m^2. This was part of valuation scheme 388551. It had a total floor area of 335m^2, so again smaller than the subject property.

31. The panel felt that it was best to look at those properties which were in the same valuation scheme as the subject property which tried to place like for like properties together. The panel understood that each valuation scheme was a guide for valuing different properties in certain locations and that it did offer some assistance when looking at properties of a similar nature. The respondent's representative had given examples of comparable properties at numbers 226 and 188 Westbourne Grove, where £1,700/m^2 and £1,200/m^2 had been applied against analysed rents of £2,423 pa and £1,208 pa. The panel found these to be more persuasive in establishing the level of value for the subject property. In considering these properties the panel preferred those in Westbourne Grove as they appeared to be situated in a more thought of location.

32. Taking into account the fit-out costs, its prominent location in Westbourne Grove in a busy upmarket position with good passing footfall 6 days a week, the panel considered that the hypothetical landlord would not allow the subject property to be let at a discount. The panel believed that as a unique sized restaurant the reduction of £75/m^2 on the main space price to £1,625/m^2 was sufficient to take into account the size disabilities associated with the subject property. It also considered that the subject property should be assessed higher than McDonalds at £1,200/m^2 but less than £1,700/m^2 on a property with living accommodation. The panel was not persuaded to reduce to a main space rate of £850/m^2 and was not satisfied that the evidence supported a reduction.

33. The panel found that the existing assessment of £650,000 RV was not unreasonable. It therefore confirmed £650,000 RV and dismissed the appeal.

Date: Friday 1 March 2024

Appeal number: CHG100878734

Right of Appeal:

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.